

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA  
Civ. No. CV- \_\_\_\_\_

UNITED STATES OF AMERICA,       )  
  )  
                  Plaintiff,       )  
  )  
                  v.                       )  
  )  
Gorman Park Properties,       )  
L.L.L.P., Grendahl Park II,    )  
LLC, and Grendahl Park III,    )  
LLC,                                )  
                  Defendants.       )  
  )

CONSENT DECREE

WHEREAS, Plaintiff United States of America ("United States"), on behalf of the United States Department of Housing and Urban Development ("HUD") and the United States Environmental Protection Agency ("EPA"), has filed a complaint alleging that Gorman Park Properties, L.L.L.P., Grendahl Park II, LLC, and Grendahl Park III, LLC, ("Defendants") violated Section 1018 of the Residential Lead-Based Paint Hazard reduction Act of 1992 ("Section 1018"), 42 U.S.C. § 4852d; and

WHEREAS, Section 1018 and the implementing regulations, found at 24 C.F.R. Part 35, Subpart A, and 40 C.F.R. Part 745, Subpart F, require, among other things, that the owners and managing agents of residential properties subject to the law make certain disclosures and provide certain records

concerning Lead-Based Paint and Lead-Based Paint Hazards to tenants when a new lease is entered into or, if the lease predates the effective date of Section 1018, at the first change to the terms of an existing lease, such as a rent increase; and

WHEREAS, Defendants own and manage 12 residential properties in Minnesota constructed prior to 1978 containing approximately 208 units subject to the United States' complaint; and

WHEREAS, the United States alleges that Defendants failed to make certain disclosures required by Section 1018 in 12 residential properties in Minnesota; and

WHEREAS, subsequent to HUD and EPA initiating their investigation, but prior to entry of this Consent Decree, Defendants retained a certified Lead-Based Paint risk assessor to conduct combination Lead-Based Paint inspections and risk assessments of all the residential properties in which they have an ownership and management interest to determine whether the properties contain Lead-Based Paint and/or Lead-Based Paint Hazards; and

WHEREAS, Defendants have agreed to abate Lead-Based Paint Hazards identified in their residential properties; and

WHEREAS, the United States alleges it is entitled to

seek injunctive relief in a judicial action, including, but not limited to, an order requiring Defendants to comply with Section 1018 prospectively, and an order requiring Defendants to abate Lead-Based Paint; and

WHEREAS, the United States alleges that Defendants are subject to administrative civil penalties by HUD and EPA for violations of Section 1018 of up to \$11,000 per violation; and

WHEREAS, the United States and Defendants agree that settlement of the claims of the United States without further litigation is in the public interest and that entry of this Consent Decree is an appropriate means of resolving this matter; and

WHEREAS, the Parties agree that settlement and entry of this Consent Decree does not constitute admission or acknowledgment of liability or wrongdoing by Defendants, but is intended solely to settle all claims asserted by the United States against Defendants on the terms set forth herein.

NOW, THEREFORE, upon consent and agreement of the United States and Defendants, and the Court having considered the matter and been duly advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## **I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 4852d(b)(2) and has personal jurisdiction over Defendants. Defendants consent to, and shall not challenge entry of, this Consent Decree and the Court's jurisdiction to enter and enforce this Consent Decree.

2. Venue is proper in this Court pursuant to 42 U.S.C. § 4852d(b)(2) and 28 U.S.C. § 1391(b) & (c), because the lawsuit involves actions that took place, and 12 Subject Properties are located, in the District of Minnesota.

## **II. PARTIES BOUND**

3. This Consent Decree shall apply to and be binding on the United States and Defendants, and their heirs, successors and assigns.

4. Defendants shall remain liable to the United States for all the obligations set forth in this Consent Decree regardless of whether Defendants sell or transfer any property subject to this Consent Decree.

## **III. DEFINITIONS**

5. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the Residential Lead-Based Paint Hazard Reduction Act shall have the meaning given in the Act or in any regulations promulgated pursuant to

the Act. Whenever other terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Clearance Examination" shall mean an activity conducted after Lead-Based Paint abatement activities have been performed to determine that the abatement activities are complete and that no settled dust-lead hazards exist. The clearance process includes a visual assessment and collection and analysis of environmental samples. The appropriate clearance standards shall be the more restrictive of those set by the jurisdiction where the property is located or by Section 403 of the Toxic Substances Control Act ("TSCA") and its implementing regulations, 40 C.F.R. Part 745, Subpart D.

b. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. A "force majeure event" shall mean any event beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting

delay to the greatest extent possible. "Force majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

d. "HUD Guidelines" shall mean the edition of the "HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" in effect on the date the work is conducted pursuant to this Consent Decree.

e. "Interest" shall mean interest pursuant to 28 U.S.C. § 1961.

f. "Lead-Based Paint" shall mean paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

g. "Lead-Based Paint Free" shall mean housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

h. "Lead-Based Paint Hazards" shall mean lead-based paint hazards as that term is defined in 40 CFR 745.65.

i. "Lead Abatement Supervisor" shall mean any person licensed by the State in which the property is located to perform lead abatement and mitigation, and supervise lead abatement workers who perform lead abatement and mitigation.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or a lower case letter.

k. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

l. "Subject Properties" shall mean the properties listed on Appendix A, attached hereto.

#### IV. COMPLIANCE WITH SECTION 1018

6. Defendants shall comply with all requirements of Section 1018 and its implementing regulations.

7. To the extent not previously accomplished, no later than ten (10) days after entry of this Consent Decree, Defendants shall provide to each tenant in the Subject Properties a lead hazard information pamphlet approved by EPA, as well as a "lead paint disclosure form" which shall include at a minimum the following:

a. Any known information concerning Lead-Based Paint Hazards and/or Lead-Based Paint;

b. A list of any available records or reports, or summaries thereof, pertaining to Lead-Based Paint Hazards and/or Lead-Based Paint in the Subject Properties; and

c. A Lead Warning Statement containing the specific language set forth in regulations promulgated pursuant to Section 1018.

8. Within twenty (20) days after entry of this Consent Decree, Defendants shall provide written notice to HUD and EPA that they have complied with the requirements of

Paragraph 7 of this Consent Decree.

**V. PAYMENT OF PENALTY**

9. Within thirty (30) days after entry of this Consent Decree, Defendants shall pay a civil penalty of \$7,500.00 to the United States, as an administrative penalty for past violations of Section 1018.

10. Payment of the civil penalty shall be rendered by cashier's check to the United States Department of Justice, in accordance with current procedures, referencing USAO File Number 2003V00091 and the civil action case name and case number of the District of Minnesota. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Minnesota. Any funds received after 5:00 p.m. (CST) shall be credited on the next business day.

11. Notification that payment of the civil penalty has been made, referencing the USAO File Number 2003V00091 and the civil action case name and case number of the District of Minnesota, shall be provided in accordance with the notification provisions of Section XVII.

12. If Defendants fail to make any payment under Paragraph 9, they shall be subject to Stipulated Penalties pursuant to Paragraph 33 of this Consent Decree. In addition,



Interest shall accrue on any unpaid amounts until the total amount due has been received.

13. Defendants shall not deduct the civil penalty paid to the United States, or any Interest or Stipulated Penalties, paid under this Consent Decree from their federal, state, or local income taxes, and the United States does not in any way release Defendants from any claims arising under Title 26 of the United States Code.

**VI. PERFORMANCE OF CHILD HEALTH IMPROVEMENT PROJECT**

14. Defendants shall implement the following Child Health Improvement Project ("CHIP") designed to reduce incidences of childhood lead poisoning in the Minneapolis area. The CHIP shall consist of promoting and conducting lead screening and testing of children in targeted areas of Minneapolis-St. Paul by purchasing a mobile lead screening van. The project shall be completed within two (2) years after entry of the Consent Decree. In implementing the CHIP, Defendants shall spend not less than \$50,000.00. The parties acknowledge and agree that in implementing the CHIP, Defendants will contract with Sustainable Resources Center, a Minnesota non-profit corporation located in Minneapolis. A detailed plan to

implement the CHIP shall be submitted to HUD and EPA by Defendant within ninety (90) days of the entry of the Consent Decree.

15. Defendants are responsible for the satisfactory completion of the CHIP.

16. With regard to the CHIP, Defendants certify that, as of the date of executing this Decree, Defendants are not required to perform or develop the CHIP by any federal, state, or local law or regulation and are not required to perform or develop the CHIP by agreement, grant, or as injunctive relief awarded in any other action in any forum. Defendants also certify they have not already received, are not currently negotiating to receive, and agree that they will not receive, credit in any other federal or state enforcement action for the CHIP activity.

17. Within ninety (90) days of completing the CHIP, Defendants shall submit a CHIP Completion Report to the United States, in accordance with Section XVII of this Consent Decree (Notices). The CHIP Completion Report shall contain the following information:

- a. A detailed description of the project as implemented;

- b. A description of any problems encountered in completing the project and the solutions thereto;
- c. An itemized list of all project costs;
- d. Certification that the project has been fully implemented pursuant to the provisions of this Decree; and
- e. A description of the environmental and public health benefits resulting from implementation of the project (with a quantification of the benefits and pollutant reductions, if feasible).

18. EPA and HUD may, in their sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of CHIP completion and Defendants shall provide such information.

19. After receiving the CHIP Completion Report, the United States shall notify Defendants whether or not Defendants have satisfactorily completed the CHIP. Disputes concerning the satisfactory performance of the CHIP may be resolved under Section XII of this Decree (Dispute Resolution).

20. Each submission required under this Section shall be signed by an official with knowledge of the CHIP and shall

bear the certification language set forth in Paragraph 55, below.

21. The United States does not in any way release Defendants from any claims arising under Title 26 of the United States Code with respect to the CHIP.

22. Any public statement, oral or written, in print, film, or other media, made by Defendants making reference to the CHIP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *United States v. Gorman Park Properties, L.L.L.P., et al.*, taken on behalf of the U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act."

#### **VII. WORK TO BE PERFORMED**

23. This Section shall govern the combination Lead-Based Paint inspections and risk assessments, hazard abatement and ongoing operations and maintenance ("O&M") work to be performed under this Consent Decree at all Subject Properties.

24. In connection with this agreement, Defendants had a combination Lead-Based Paint inspection and risk assessment performed on each Subject Property for Lead-Based Paint and/or Lead-Based Paint Hazards consistent with Chapters 5

and 7 of the HUD Guidelines. For each Subject Property, Defendants provided a copy of the combined Lead-Based Paint inspection and risk assessment report ("Combination Report") to HUD and EPA.

25.a. No later than sixty (60) days after entry of this Consent Decree, Defendants shall provide copies to HUD and EPA of a plan for Lead-Based Paint Hazard abatement ("Hazard Abatement Plan") for all Subject Properties where Lead-Based Paint Hazards have been identified. The Hazard Abatement Plan shall be prepared by a certified Lead Abatement Supervisor and shall include a list of property addresses to be abated, a list of properties with children, information about the components to be abated, the method of abatement chosen, and the names of certified abatement contractors. The Hazard Abatement Plan shall be prepared to ensure that Lead-Based Paint Hazard abatement activities required by Section VII of this Consent Decree are conducted in accordance with Chapters 12 and/or 13 of the HUD Guidelines. The Hazard Abatement Plan shall include specifications as provided in the HUD Guidelines, Appendix 7.3. Lead-Based Paint Abatement Specification, or the equivalent.

b. After review of the Hazard Abatement Plan, HUD shall, in writing: (1) approve, in whole or in part, the submission; (2) approve the submission with modifications; or (3) disapprove, in whole or in part, the submission, directing

Defendants to resubmit the document after modification to address HUD's comments. If HUD disapproves of or requires revisions to the Hazard Abatement Plan, in whole or in part, Defendants shall amend and submit to HUD and EPA a revised Hazard Abatement Plan which is responsive to the directions in HUD's comments, within fifteen (15) days of receiving such comments. The Hazard Abatement Plan must be approved by HUD before any work is performed at the Subject Properties pursuant to this Consent Decree.

c. No later than thirty (30) days after approval of the Hazard Abatement Plan, Defendants shall submit a plan for ongoing operations and maintenance ("O&M Plan") for those properties that are not Lead-Based Paint Free. After review of the O&M Plan, HUD shall, in writing: (1) approve, in whole or in part, the submission; (2) approve the submission with modifications; or (3) disapprove, in whole or in part, the submission, directing the Defendants to resubmit the document after modification to address HUD's comments. If HUD disapproves of or requires revisions to the O&M Plan, in whole or in part, Defendants shall amend and resubmit to HUD a revised O&M Plan which is responsive to the directions in HUD's comments, within fifteen (15) days of receiving such comments. The O&M Plan shall be prepared in accordance with Chapters 6 and 17 of the HUD Guidelines. The O&M Plan shall also include a

plan for monitoring the condition of varnish that contains lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

26. For each Subject Property where Lead-Based Paint Hazards have been identified, the following work shall be performed:

a. Lead-Based Paint Hazards identified in the units, common areas, and exteriors of each Subject Property shall be abated within five (5) years after approval of the Hazard Abatement Plan, except hazard abatement of properties with children six (6) years of age or under or pregnant women shall be completed within six (6) months of approval of the Hazard Abatement Plan. Hazard abatement of the Subject Properties shall be in accordance with the Hazard Abatement Plan and with Chapters 12 and/or 13 of the HUD Guidelines.

b. No later than sixty (60) days after the approval of the Hazard Abatement Plan, any bare soil identified on the grounds of each Subject Property shall be covered with a vegetative ground covering, mulch, or other appropriate covering in accordance with Chapter 11 of the HUD Guidelines.

c. Worksite preparation and occupant protection shall be in accordance with Chapter 8 of the HUD Guidelines.

d. Daily and final cleanups shall be in accordance with Chapter 14 of the HUD Guidelines.

e. Clearance Examinations shall be conducted by a certified Lead-Based Paint risk assessor in each building upon completion of final cleanup in accordance with Chapter 15 of the HUD Guidelines, TSCA Section 403, 15 U.S.C. § 2683 and 40 C.F.R. § 745.227(e)(8) and (9). Within fifteen (15) days of the receipt of the clearance examination report ("Clearance Report"), Defendants shall submit the Clearance Report to HUD. The Clearance Report shall contain all results of dust samples analyzed at an EPA-accredited laboratory. If the results indicate that the clearance standard is not achieved, Defendants shall repeat the cleaning procedures identified above under Paragraph 26.d, repeat dust clearance sampling within five (5) days after receipt of the failed Clearance Report, and repeat this procedure until the clearance standard has been attained. All additional Clearance Reports shall be submitted as described above.

f. In each of the five years, Defendants shall make substantial and reasonable progress on the Lead-Based Paint Hazard abatement agreed to in this Consent Decree and shall detail the progress made in the Annual Report required in Paragraph 32 of this Consent Decree. The Parties agree that substantial and reasonable progress shall mean completion of at least 1/5 of the total inventory of Subject Properties in each of the five (5) years.



27. All the requirements of this Section, except the timelines, shall apply where Defendants or any governmental entity are or become aware of a unit where a child with an elevated blood lead level resides or is a regular visitor. Defendant shall perform a Lead-Based Paint inspection and risk assessment and complete all required abatement activity within five (5) months after Defendants are or become aware of a unit where a child with an elevated blood lead level resides or is a regular visitor. Defendants shall also comply with any work required by any other government entity, such as the City, County, or State.

28. Ongoing O&M in all Subject Properties that are not certified Lead-Based Paint Free shall be implemented at the completion of any hazard abatement activity and shall be in accordance with the O&M Plan and Chapters 6 and 17 of the HUD Guidelines. O&M activities shall ensure that varnish that contains lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight is maintained in an intact condition, and does not create dust hazards. During reevaluations, Defendants shall also ensure that all abated areas are still intact and the abatement method has not failed. If any abatement has failed, Defendants shall repair the area in accordance with Chapters 12 and/or 13 of the HUD Guidelines and perform a Clearance Examination within thirty (30) days of

discovery. If dust hazards are discovered as part of ongoing reevaluations, Defendants shall address them according to Chapter 11 of the HUD Guidelines.

**VIII. QUALIFICATIONS TO CONDUCT LEAD-BASED PAINT WORK**

29. All Lead-Based Paint inspections, risk assessments, hazard abatement, and other Lead-Based Paint work shall be consistent with the HUD Guidelines and conducted by individuals authorized to perform the work in accordance with the laws of the jurisdiction where the property is located. Persons performing interim controls, visual assessments for O&M, and general maintenance shall be trained in either HUD's one day "Lead Safe Work Practices" class or the HUD/EPA "Remodeling, Repair, and Painting" class.

30. Defendants shall ensure that Clearance Examinations are not conducted by the same individual and/or same business entity conducting the Lead-Based Paint Hazard abatement work that is being evaluated by the Clearance Examination.

31. Defendants shall ensure that Lead-Based Paint inspections and risk assessments are not done by the same individual and/or same business entity doing Lead-Based Paint Hazard abatement work on the Subject Properties.

**IX. REPORTING REQUIREMENTS**

32.a. On or before the one (1) year anniversary of

the entry of this Consent Decree, and annually thereafter until completion of all Lead-Based Paint Hazard abatement, Defendants shall submit a written Annual Report to HUD and EPA. The Annual Report shall include, at a minimum: (1) a list of the property addresses where properties have been abated; (2) the status of hazard abatement activities, including the type of abatement method chosen and components abated, and a list of the property addresses where hazard abatement has been completed during that reporting period; (3) the status of ongoing O&M activities in accordance with Paragraph 28; (4) any and all information concerning the cost of the inspections, risk assessments and hazard abatement performed; (5) any Clearance Reports that have not been previously provided to HUD under Paragraph 26.e.; and (6) any State or City notices relating to Lead-Based Paint violations at the Subject Properties.

b. Defendants shall ensure contractor compliance with any State and/or City requirements for reporting Lead-Based Paint inspections, risk assessments, and hazard abatement work in accordance with the laws of the jurisdiction where the property is located.

#### **X. STIPULATED PENALTIES**

33. If Defendants fail to make timely payment of the penalty provided for in Section V, Defendants shall be required to pay as Stipulated Penalties \$300 per day. Stipulated

Penalties shall accrue until such time as the original penalty and all accrued Stipulated Penalties are paid.

34. If Defendants fail to complete hazard abatement as described in Paragraphs 26 and 27, or to conduct O&M as described in Paragraph 28, Defendants shall pay Stipulated Penalties of \$300 per day per violation per each unit, until the hazard abatement and/or O&M is completed. If any abatement method fails because of Defendants' failure to follow the HUD Guidelines and/or conduct O&M as described in Paragraph 28, those properties shall not be considered abated in accordance with this Consent Decree and Stipulated Penalties shall accrue.

35. If Defendants fail to submit any information or reports to HUD, as described in Paragraphs 25, 26, and 32 in accordance with the requirements and/or deadlines set forth in this Consent Decree, Defendants shall pay Stipulated Penalties of \$200 per day for each day each such submission is deemed inadequate and/or late.

36. Payment of Stipulated Penalties shall be made to the United States in the manner set forth in Paragraph 10 of this Consent Decree.

37. Stipulated Penalties shall accrue regardless of whether the United States has notified Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day

after payment is due and shall continue to accrue through the date of payment, or until the required activity is performed. However, the United States may, in its unreviewable discretion, waive or reduce the amount of any Stipulated Penalty. Nothing herein shall prevent the United States from seeking other relief that may be available for non-compliance, nor prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

**XI. FORCE MAJEURE**

38. Defendants shall provide notice orally or by electronic or facsimile transmission to the Civil Division Chief of the United States Attorney's Office as detailed in Section XVII of this Consent Decree (Notice) as soon as possible, but not later than 72 hours after the time Defendants first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendants shall also provide formal, written notice, as provide in Section XVII of this Consent Decree (Notice), within seven (7) days of the time Defendants first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its causes(s); Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendants' rationale for attributing any delay to a force majeure event.

Failure to provide oral and written notice as required by this Paragraph shall preclude Defendants from asserting any claim of force majeure.

39. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendants to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XIX of this Consent Decree (Integration).

40. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendants, the United States' position shall be binding, unless Defendants invoke Dispute Resolution under Section XII of this Consent Decree. In any dispute involving force majeure, Defendants bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is in fact a force majeure event; that Defendants gave the notice required by Paragraph 38 of this Section; that the force majeure event caused any delay Defendants claim was attributable to that event, and that Defendants exercised best efforts to prevent or minimize any delay caused by the event.

## **XII. DISPUTE RESOLUTION**

41. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce the obligations of Defendants under this Consent Decree that Defendants have not timely disputed in accordance with this Section.

42. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

43. If the Parties are not in agreement at the end of this informal negotiations period, the position of the United States shall be controlling unless Defendants file a petition with the Court for resolution of the dispute within twenty-one (21) days of receipt of the United States' final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have twenty-one

(21) days to file a response with an alternate proposal for resolution. In any such dispute, Defendants shall have the burden of proving that the United States' proposal is arbitrary and capricious.

44. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect any obligation of Defendants under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. Notwithstanding the stay of payment, Stipulated Penalties shall accrue from the first day of non-compliance with any applicable provision of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Paragraph 37.

### **XIII. RIGHT OF ENTRY**

45. HUD, EPA and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon all Subject Properties owned or controlled by Defendants, at all reasonable times, upon proper presentation of credentials, for the purposes of:



a. monitoring the progress of activities required by this Consent Decree;

b. verifying any data or information required to be submitted pursuant to this Consent Decree;

c. obtaining samples and, upon request, splits of any samples taken by Defendants or their consultants (upon request, Defendants will be provided with splits of all samples taken by the United States); and

d. otherwise assessing Defendants' compliance with this Consent Decree.

46. This Section in no way limits or affects any right of entry and inspection held by the United States, HUD, EPA, any State in which the property is located, or any City in which the property is located pursuant to applicable federal, state or local laws, regulations, or permits.

#### **XIV. COVENANT NOT TO SUE**

47. In consideration of the payments required by this Consent Decree and the work to be performed, and except as otherwise provided in this Consent Decree, the United States covenants not to sue or take administrative or other action against Defendants arising out of violations of Section 1018 at the Subject Properties that occurred on or before the date of lodging of this Consent Decree. This covenant not to sue with respect to Defendants is conditioned upon the complete and satisfactory performance by Defendants of their obligations

under this Consent Decree. This covenant not to sue extends only to Defendants and does not extend to any other person or business entity.

**XV. PLAINTIFFS' RESERVATIONS OF RIGHTS**

48. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 47. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Defendants to meet a requirement of this Consent Decree;
- b. claims based upon violations of Section 1018 that occur after the date of lodging of this Consent Decree;
- c. criminal liability; and
- d. all claims not barred by Paragraph 47 of this Consent Decree.

**XVI. MISCELLANEOUS**

49. This Consent Decree in no way affects Defendants' responsibilities to comply with all federal, state, or local laws and regulations.

50. Except as otherwise provided in this Consent Decree, each Party shall bear its own costs and attorney's fees

in this action.

**XVII. NOTICES AND SUBMISSIONS**

51. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be in writing and directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States and Defendants.

52. All notices and reports shall refer to this Consent Decree and the date of entry of the Consent Decree, and shall cite the case name of *United States v. Gorman Park Properties, L.L.L.P., et al.* and the court case number.

*U.S. Attorney's Office:*

Chief, Civil Division  
United States Attorney's Office  
U.S. Department of Justice  
600 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

*U.S. Department of Justice:*

Chief, Environmental Enforcement  
Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

*U.S. Department of Housing and Urban Development:*

Director, Compliance Assistance and  
Enforcement Division  
Office of Healthy Homes and Lead Hazard  
Control

U.S. Department of Housing and Urban  
Development  
451 7th Street, SW  
Room P-3206  
Washington, DC 20410

and

John B. Shumway, Deputy Assistant  
General Counsel  
Office of General Counsel  
U.S. Department of Housing and Urban  
Development  
451 7th Street, SW  
Room 9253  
Washington, DC 20410

*U.S. Environmental Protection Agency:*

Chief, Pesticides and Toxics  
Enforcement Section  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

*Defendants:*

Gorman Park Properties, L.L.L.P.  
Grendahl Park II, LLC  
Grendahl Park III, LLC  
c/o The Park Apartments  
200 15<sup>th</sup> Street West  
Minneapolis, MN 55403

53. Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address.

54. Any notice, report, certification, data presentation, or other document submitted by Defendants pursuant to this Consent Decree which discusses, describes, demonstrates, supports any findings, or makes any representation concerning Defendants' compliance or non-compliance with any requirement of this Consent Decree shall be certified by Defendants or a duly authorized representative of Defendants. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the United States consistent with this Paragraph.

55. The certification required by Paragraph 54, above, shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. With regard to

[the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such persons, the information submitted is, the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**XVIII. RETENTION OF JURISDICTION**

56. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XIX. INTEGRATION**

57. This Consent Decree and its Appendix constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. It may not be enlarged, modified, or altered unless such modifications are made in writing and approved by the Parties and the Court. The Parties acknowledge that there are no representations, agreements or understandings

relating to the settlement other than those expressly contained in this Consent Decree.

**XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

58. Defendants agree and acknowledge that final approval of this Consent Decree by the United States and entry of this Consent Decree are subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, opportunity for public comment for at least thirty (30) days, and consideration of any comments prior to entry of the Consent Decree by the Court. The United States reserves its right to withdraw consent to this Consent Decree based on comments received during the public notice period. Defendants consent to entry of this Consent Decree without further notice to the Court.

59. If for any reason the Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

**XXI. EFFECTIVE DATE**

60. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

**XXII. RECORD RETENTION AND PRESERVATION**

61. Defendants shall preserve, during the pendency of this Consent Decree and for a minimum of at least twelve (12)

months after its termination, all documents and records in their custody, control or possession and in the custody, control or possession of their employees, agents, assigns, contractors, subcontractors or consultants, which in any manner relate to this Consent Decree or to the performance of work under this Consent Decree. At the end of this twelve (12) month period and at least thirty (30) calendar days before any document or record is destroyed, Defendant shall notify and make available to the United States such documents and records, or shall provide the originals or accurate, true and complete copies of such documents and records to the United States. Defendant shall not destroy any document or record to which the United States has requested access for inspection or copying until the United States has obtained such access or copies or withdrawn its request for such access or copies.

#### **XXIII. SIGNATORIES/SERVICE**

62. Each undersigned representative of the United States and Defendants certifies that he or she has reviewed this Consent Decree, and had the opportunity to have this Consent Decree reviewed by counsel, and is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.



63. Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree based on public comments received pursuant to Paragraph 58 above.

64. Defendants agree that the person identified on their behalf under Section XVII is authorized to accept service of process by mail on behalf of Defendants with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service by certified mail in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

65. Upon approval and entry of this Consent Decree by the Court, the Consent Decree shall constitute a final judgment pursuant to Rules 54 and 58 of the Federal Rule of Civil Procedure.

#### **XXIV. TERMINATION**

66. This Consent Decree shall terminate after all of the following have occurred:

- a. Defendants have completed all work required by this Consent Decree;
- b. Defendants have paid all penalties and interest

due under this Consent Decree and no penalties are outstanding or owed to the United States;

c. Defendants have certified compliance with the terms and conditions of this Consent Decree to the United States; and

d. The United States has not disputed Defendants' certification. If the United States disputes Defendants' certification, the Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court. If the United States does not contest the certification, the United States shall petition or the Parties shall jointly petition the Court to terminate the Consent Decree.

So entered in accordance with the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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UNITED STATES DISTRICT COURT JUDGE

United States v. Gorman Park Properties, L.L.L.P., et al.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the above matter, relating to the sites enumerated in this Consent Decree:

FOR PLAINTIFF, UNITED STATES OF AMERICA:

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division

\_\_\_\_\_ Date \_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

THOMAS B. HEFFELFINGER  
United States Attorney

JOAN HUMES  
Civil Division Chief

\_\_\_\_\_ Date \_\_\_\_\_  
GREGORY G. BROOKER  
Attorney Registration No. 166066  
Assistant U.S. Attorney  
District of Minnesota  
600 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

United States v. Gorman Park Properties, L.L.L.P., et al.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
BERTRAM C. FREY  
Acting Regional Counsel  
Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Date \_\_\_\_\_

\_\_\_\_\_  
MARY T. MCAULIFFE  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Date \_\_\_\_\_

United States v. Gorman Park Properties, L.L.L.P., et al.

FOR Gorman Park Properties, L.L.L.P.:

By: \_\_\_\_\_ Date \_\_\_\_\_

Its: \_\_\_\_\_

FOR Grendahl Park II, LLC:

By: \_\_\_\_\_ Date \_\_\_\_\_

Its: \_\_\_\_\_

FOR Grendahl Park II, LLC:

By: \_\_\_\_\_ Date \_\_\_\_\_

Its: \_\_\_\_\_

APPENDIX A

Subject Properties with Street Addresses and State, Number of  
Units, Units with Children, and Construction Date

Property Location	Property Owner	Number of Units at Property	Number of Children Known to Reside at Property
115-129 Fifteenth Street West Minneapolis, MN 55403	Gorman Park Properties, L.L.L.P.	24	3
201 Fifteenth Street West Minneapolis, MN 55403	Gorman Park Properties, L.L.L.P.	16	0
205 Fifteenth Street West Minneapolis, MN 55403	Gorman Park Properties, L.L.L.P.	26	2
209 Fifteenth Street West Minneapolis, MN 55403	Gorman Park Properties, L.L.L.P.	14	4
214 Fifteenth Street West Minneapolis, MN 55403	Grendahl Park II, LLC	31	2
225 Fifteenth Street West Minneapolis, MN 55403	Grendahl Park III, LLC	50	3
1430 Spruce Place Minneapolis, MN 55403	Gorman Park Properties, L.L.L.P.	25	2
1507 Spruce Place Minneapolis, MN 55403	Gorman Park Properties, L.L.L.P.	1	0
2209 Bryant Ave. South Minneapolis, MN 55405	Gorman Park Properties, L.L.L.P.	11	0
1027-29 20th Ave. SE Minneapolis, MN 55414	Gorman Park Properties, L.L.L.P.	4	0
150-152 Orlin Ave. SE Minneapolis, MN 55414	Gorman Park Properties, L.L.L.P.	4	0

72 Clearance Ave. SE Minneapolis, MN 55414	Gorman Park Properties, L.L.L.P.	2	0